[1] D.B.INCOME TAX REFERENCE APPLICATION NO.97/1999
[CIT, JODHPUR VS. M/S CHANRA CHEMOUX, JODHPUR]

[2] D.B. INCOME TAX REFERENCE APPLICATION NO.99/1999
[CIT, JODHPUR VS. SH. HARISH BOOB]

DATED : 21.09.2007

HON'BLE MR. BHAGWATI PRASAD, J.
HON'BLE MR. MUNISHWAR NATH BHANDARI, J.

Mr.K.K.Bissa for the applicant.
Mr.Sanjeev Jodhari for the respondent.

BY THE COURT : [AS PER HON'BLE MR. BHANDARI,J.]

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Both these reference applications have been filed under the provisions of Section 256 [2] of the Income Tax Act, 1961 by the Revenue as the subject matter of both the reference applications are same, therefore, they are being disposed of by the common order. The Income Tax Appellate Tribunal had refused to make reference of any of the questions sought to be referred to the High Court vide its order dated 28.01.99.

A reference application was earlier filed before the Income Tax Appellate Tribunal under the provisions of Section 256 [1] of the Income Tax Act for reference of certain questions to this Court. Those questions were arising out of the order of the learned Tribunal vide its order dated 25.08.98 in relation to the block Assessment Years 1986-87 to 1996-97. Following questions were sought for reference.

> "[1]Whether on the facts and in the circumstances of the case the ITAT was justified in law in altogether ignoring the circumstantial evidence and deleting the addition of Rs.1,55,000/- made on account of undeclared payments made for the purchase of immovable property?
>
> [2] Whether on the facts and in the circumstances of the case the ITAT was justified in law in altogether ignoring the circumstantial evidence and deleting the addition of Rs.60,000/- made on account of undeclared payments made for the purchase of immovable property?"

The learned Income Tax Appellate Tribunal vide its order dated 28.01.99 has refused to refer both the question. Learned counsel appearing for the Revenue submitted that pursuant to the provisions of Section 158 [BB] of the Income Tax Act, assessee's undisclosed income can be computed on the basis of material or information as are available with the Assessing Officer thus according to the learned counsel for the Revenue, the Appellate Tribunal has wrongly refused the referred question so raised for its reference. It was thus prayed that the High Court should call for the reference of the issues.

Learned counsel appearing for the assessee urged that both the questions raised by the Revenue are not referable questions as the learned Tribunal had considered each and every aspect of the matter denying reference of both the questions to the Hon'ble High Court. It was thus prayed that the reference applications moved by the Revenue should be rejected.

We have considered the rival submissions of the parties and find that Assessing Officer had made addition of Rs.1,55,000/- and Rs.60,000/- on account of investment of money for purchase of immovable property. Both the additions were deleted by the Appellate Tribunal while deciding the appeals against the order of block assessment under Section 158 [BB] on the ground that there was no material available with the Assessing Officer on the basis of which such addition could have been made. Though it was urged that Assessing Officer was in possession of the information regarding payment of money by assessee in respect of other transaction thus judging the past conduct of assessee and nature of transaction, a fair estimate was made.

On the other hand, learned counsel for the assessee submitted that no material information was in possession of the Assessing Officer as required under Chapter XIV B for making any addition in the block assessment. It is only on the basis of inferences drawn by the assessee while making assessment that additions were made however, the said issue was carefully dealt with by the Tribunal while deciding the matter and otherwise the additions can be made only on the basis of incrimination of document/material collected and assessed during the course of search. The various benches of the Tribunal have followed this principle thus the issue sought to be referred can be treated as

referable as it had already settled by the various benches of the Tribunal.

We have gone through the provisions of Section 158 [BB] of the Income Tax Act and find that even in accordance with the provision addition can be made only when evidence is available as a result of search or a requisition of books of accounts, documents and other material, however, addition cannot be made on the basis of inferences. Various benches of Tribunal are following the principle that additions can be made only on the basis of incriminating documents/material collected during the course of search. However, in the present matter, no such facts are available rather it says that additions were made by the Assessing Officer based on inferences which does not fall within the scope of Section 158 [BB] of the Income Tax Act, therefore in our opinion two questions raised for reference cannot be said to be referable and thereby we find no fault in the order of the Tribunal. The factual position of the case has already been addressed by the appellate Tribunal thus, the finding of fact recorded by the Tribunal cannot be made subject matter of a reference. Therefore, we are not persuaded by any of the arguments of the learned counsel for the Revenue. Hence both the reference petitions are hereby dismissed.

[MUNISHWAR NATH BHANDARI] J. **[BHAGWATI PRASAD], J.**

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